

MATTHEW P. KANNY (State Bar No. 167118)  
E-mail: mkanny@manatt.com  
MAURA K. GIERL (State Bar No. 287430)  
E-mail: mgierl@manatt.com  
MANATT, PHELPS & PHILLIPS, LLP  
11355 West Olympic Boulevard  
Los Angeles, California 90064-1614  
Tel.: (310) 312-4000; Fax: (310) 312-4224

ARUNABHA BHOUMIK (*pro hac vice*)  
E-mail: abhoumik@manatt.com  
MANATT, PHELPS & PHILLIPS, LLP  
7 Times Square  
New York, New York 10036  
Tel.: (212) 790-4500; Fax: (212) 790-7575

*Attorneys for Defendant*  
HORSE RACING LABS, LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES TURF CLUB,  
INCORPORATED, a California  
Corporation, *et al.*,

Plaintiffs,

vs.

HORSE RACING LABS, LLC, a  
Delaware Limited Liability  
Company (a/k/a IMMERSE, LLC),  
d/b/a DERBYWARS, and DOES 1  
through 10, inclusive,

Defendants.

No. 2:15-cv-09332-SJO (JEMx)

Honorable S. James Otero  
Courtroom No. 10C

**DECLARATION OF MARK MIDLAND  
IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT OF  
DEFENDANT HORSE RACING LABS,  
LLC**

FAC Filed: May 16, 2016  
Fact Discovery Cutoff: March 27, 2017  
Expert Discovery Cutoff: April 10, 2017  
Final Pretrial Conf.: June 19, 2017  
Trial Date: June 27, 2017

**DECLARATION OF MARK MIDLAND**

I, Mark Midland, hereby declare as follows:

1. I am the Chief Executive Officer of Horse Racing Labs, LLC (“HRL”), doing business as Derby Wars (“Derby Wars”). The following facts are within my personal knowledge, and if called upon as a witness, I would and could testify competently thereto.

2. I have been an avid horse racing fan for decades, and have spent my entire post-graduate career working within the horse racing industry. Because of my decades of experience, I am familiar with a wide variety of aspects of the horse racing industry, including pari-mutuel wagering, contest play, and handicapping.

3. In 1997, I joined Churchill Downs. While at Churchill Downs, I worked on marketing and promotions, including on TwinSpiresClub, the database marketing initiative of Churchill Downs. Upon my departure, I was the Vice President of Corporate Marketing.

4. In 2005, I joined Harrah’s in Louisiana. While at Harrah’s, I was the director of marketing of the Louisiana Downs Racetrack and the Horseshoe Casino. Upon my departure from Harrah’s, I was the Vice President of Racing Operations.

5. In 2009, I joined Youbet, which offered online advanced deposit pari-mutuel wagering (“ADW”) on horse racing. Of the Youbet team, I had the most experience in the horseracing industry, and led Youbet’s racing efforts as the Vice President of Racing.

6. In 2009, I founded HRL, formerly known as Immerse!, LLC, with my co-founders Mike Shutty and Travis Stone. Mr. Shutty, Mr. Stone and I founded Horse Racing Labs because we were passionate about horseracing, and believed there was a dearth of innovation in the horseracing industry. We believed that by investing in innovation within the horseracing industry, we could educate and bring in new fans to the industry. Later that year, we launched Horse Racing Nation, a

1 free wiki community focused on racing information, insights and discussion for  
2 passionate horse racing fans.

3 7. In October 2011, HRL launched Derby Wars and has continuously  
4 operated the website since that time. Derby Wars is a website that offers skill-  
5 based fantasy league competitions based on horse racing. HRL launched Derby  
6 Wars because we felt that it was another avenue for innovation and growth in the  
7 horse racing industry. We wanted to bring in new fans to the horse racing industry  
8 so that other people could learn to enjoy something we were all very passionate  
9 about. We wanted to create a contest site that infused an additional level of  
10 entertainment into the horse racing industry, and that was more technologically  
11 advanced than some of the other contest sites in existence at that time.

12 8. Derby Wars designs its various contests, scores the contests, tabulates  
13 the winners, and provides an interactive website experience and social platform for  
14 participants to learn about and discuss horse racing.

15 9. Derby Wars' contests are designed to use and do use public  
16 information only. Derby Wars does not use race tracks' intellectual property or  
17 their content. In particular, Derby Wars does not use video content of tracks (it  
18 does not actually show live (or delayed) video of races). However, as discussed  
19 below, Derby Wars has entered into agreements with certain tracks that grant Derby  
20 Wars the right use their content.

21 10. Since its inception, Derby Wars has offered, and continues to offer,  
22 both free and pay-to-play horse racing contests. In Derby Wars' free and pay-to  
23 play games, participants compete with one another by selecting horses in a series of  
24 real world races. The contests consist of a number of specified horse races that are  
25 run at various horse racing tracks across the United States, including races run at  
26 Plaintiffs' tracks. Derby Wars' contests are typically comprised of at least six horse  
27 races, with participants selecting a horse (and a backup horse) in each race. The  
28 various horse races within each contest rarely, if ever, all start at the same time.

1           11. Participants in Derby Wars' contests are awarded points based on how  
2 their selections collectively perform over that series of races. Derby Wars attributes  
3 points to players based on payouts of a mythical \$2 bet at the tracks. For each  
4 mythical dollar that would be paid out at a track, Derby Wars attributes one point.  
5 However, Derby Wars' point system is subject to maximum caps set according to  
6 the game's rules. In other words, even if a player makes a selection that would earn  
7 \$100 at a track based on a mythical \$2 bet, Derby Wars will allocate a much lower  
8 number of points for that selection. Derby Wars does this because it increases the  
9 skill required to win a contest, and lessens the impact of any "luck" in selecting a  
10 long shot winner of a particular race.

11           12. At the end of each contest, after all of the races have been run, the  
12 players with the highest point scores win prizes. Derby Wars' contests typically  
13 take anywhere from one and a half hours to three hours to play.

14           13. All of Derby Wars' contests have a fixed entry fee that a participant  
15 must pay for the opportunity to play in the contest, a fixed prize, and a maximum  
16 number of participants.

17           14. The entry fees into each of Derby Wars' contests are always set in  
18 advance of the contests. Although there are instances where the entry fee may be  
19 complimentary, Derby Wars communicates that those games are free games. The  
20 fixed entry fees are not the same for all contests; instead, Derby Wars fixes the  
21 entry fee for each individual contest. Within each contest, a participant must pay  
22 the predetermined and communicated fee in exchange for the opportunity to play in  
23 that contest. Thus, in both Derby Wars' free and pay-to-play contests, participants  
24 cannot deviate from the set entry fee; they cannot pay more or less than what is  
25 required for the opportunity to play in any given contest.

26           15. In addition to purchasing the opportunity to play in Derby Wars'  
27 contests, the entry fee also provides contest participants with access to additional  
28 services, such as the online chat feature, access to a leaderboard, access to a display

1 of other participants' selections, and access to a graphic that displays how many  
2 people selected each horse. We believe these features make the contests more fun  
3 and engaging to the players, and set Derby Wars apart from its competitors.

4 16. The prizes for winning Derby Wars' contests are predetermined and  
5 cannot change, and are communicated to participants before the contests begin.  
6 The prize for each contest is not made up of monies collected from entry fees paid  
7 by contest participants. Once the contest starts, the prize is guaranteed to be won  
8 by one of the participants, and it cannot be won by Derby Wars. As discussed  
9 above, the prizes are awarded to the participants who achieve the highest scores in  
10 the contest, and the prizes awarded are the same regardless of the total number of  
11 points scored.

12 17. There are instances in which Derby Wars can take a business loss  
13 related to the offering of a contest. In many of Derby Wars' contests, Derby Wars  
14 has the potential to lose revenue because the fixed prize amount is higher than the  
15 entry fee multiplied by the number of participants. Also, in the past, Derby Wars  
16 has reimbursed participants where they did not get their selections in on time. In  
17 certain of those instances, Derby Wars has run a contest at a loss, because the total  
18 prize exceeds the total amount of collected entry fees after reimbursement.

19 18. Derby Wars has several contest formats. The three primary types of  
20 contests are "Open", "Lockdown" and "Survivor". There are other types of current  
21 contests as well, but Derby Wars only rarely offers them, and they represent a  
22 negligible amount of Derby Wars' revenue.

23 19. In Open contests, which represent a majority of Derby Wars' contests,  
24 participants select their horses and alternates before each race (which have scattered  
25 start times) at any time before the start of the race. In other words, if the contest  
26 runs from noon until 3 p.m., with the races starting every half hour, a participant  
27 might pick a horse in the first race before noon, then wait until the first race is  
28 completed to makes his or her selection in the second race, and so on and so forth.

1 Essentially, participants can manage, strategize and change their selections  
2 continuously throughout the contest until the beginning of the final race.

3 20. In Lockdown contests, which are the second most frequent contest  
4 offerings, participants must select and lock into their horses for all of the races in  
5 the contest before the first race begins.

6 21. In Survivor contests, participants compete in a larger tournament  
7 comprised of several races. Within the tournament, participants compete in single-  
8 elimination stages in which their horse pick must finish in the top three positions at  
9 the race to advance to the next round. At the end of the tournament, the participant  
10 that survived the longest and accrued the most points wins a prize.

11 22. When we designed Derby Wars' contests, we designed them to involve  
12 a substantial amount of skill. Among other things, we believed requiring skill in  
13 the contests adds to the entertainment of the contests.

14 23. Derby Wars is a relatively small company. Although Derby Wars'  
15 contest entry fees have increased over time, these amounts do not take into account  
16 the substantial amount of prizes paid to contest winners, or Derby Wars' many  
17 expenses, overhead and other revenue deductions.

18 24. Plaintiffs' tracks constitute less than about 25% of the tracks used in  
19 Derby Wars' contests

20 25. Based on my experience in the horse racing industry, as well as what I  
21 have learned from this lawsuit, I know that the eight Plaintiffs are all owned by  
22 TSG Developments Investments, Inc., which I believe has been referred to in the  
23 industry as "The Stronach Group."

24 26. Before this lawsuit was filed, I had several conversations with  
25 representatives of Plaintiffs' race tracks, as well as executives of the Stronach  
26 Group, about doing business together, entering into marketing partnerships, and  
27 even, at times, the Stronach Group investing in or acquiring HRL or Derby Wars.

28

1           27. In particular, from 2011 through 2013, I had numerous discussions and  
2 exchanged many e-mails with Mike Calderone, who represented to me that he was  
3 the Chief Marketing Officer of the Stronach Group.

4           28. For example, in September of 2011, I spoke with Mr. Calderone about  
5 entering into a partnership arrangement. During our meeting, I explained to Mr.  
6 Calderone that a primary goal of HRL was to drive innovation and new fans into  
7 the horse racing industry. I also explained that HRL was developing and would  
8 soon launch Derby Wars, which might partner nicely with Plaintiffs' tracks'  
9 websites. Judging from Mr. Calderone's tone of voice (and the fact that we had  
10 many subsequent meetings, telephone calls and e-mails), he appeared enthusiastic  
11 about the opportunity of getting in on the ground level with HRL and Derby Wars.  
12 Mr. Calderone and I had many similar discussions over the next few years about the  
13 opportunity for the Stronach Group and Derby Wars to work together.

14           29. On September 30, 2011, I e-mailed Mr. Calderone a link to the beta  
15 version of the Derby Wars website, which included pay-to-play contests that  
16 included races run at Plaintiffs' tracks. I invited him to explore the various  
17 tournament styles. At that time, Derby Wars was about to launch its free and pay-  
18 to-play horse racing contests. Mr. Calderone told me that he reviewed the beta  
19 version of the Derby Wars website. Around that time, I also proposed that the  
20 Stronach Group and Derby Wars partner with each other to connect Derby Wars  
21 contests with the Gulfstream Park website. Gulfstream Park is one of Plaintiffs'  
22 tracks. In my view, this would increase engagement for visitors to Gulfstream  
23 Park's website, and would result in mutually beneficial revenue opportunities.

24           30. After I sent Mr. Calderone the link to the Derby Wars website, I had  
25 several discussions with Mr. Calderone in which we discussed the fact that Derby  
26 Wars was using major tracks, including Plaintiffs' tracks, in Derby Wars' pay-to-  
27 play contests. We also discussed how Derby Wars' contests could be integrated  
28



1 with Plaintiffs' tracks. I never heard him object to Derby Wars' pay-to-play  
2 contests in those communications.

3 31. On October 3, 2011, Mr. Calderone sent me an e-mail, and copied  
4 Scott Daruty, who I understood to be the President of Monarch Content  
5 Management, LLC (another TSG company) and officer of Los Angeles Turf Club,  
6 regarding the best ways for the Stronach Group and HRL to work together. He  
7 invited me to have a follow-up discussion about using Derby Wars for a joint  
8 venture program with HorseRaceGame and as a competition on the race track  
9 websites. In subsequent conversations, Mr. Calderone told me that his reference to  
10 "race track websites" was referring to Plaintiffs' tracks, which I had inferred when I  
11 received the e-mail.

12 32. On October 6, 2011, Mr. Calderone and I had another discussion on  
13 the telephone about the Stronach Group and HRL working together. Among other  
14 things, we discussed the Stronach Group implementing Derby Wars' contests  
15 across the Stronach Group's websites. Attached hereto at **Exhibit A** is a true and  
16 correct copy of an e-mail that Mr. Calderone sent me on October 6, 2011, as well as  
17 further discussions I had with my business partners about Mr. Calderone's  
18 proposal. Mr. Calderone's e-mail accurately reflects the substance of my  
19 conversation with him.

20 33. A few days later, on October 14, 2011, I e-mailed Mr. Calderone and  
21 reported that Derby Wars had a great first weekend of operations. I wanted Mr.  
22 Calderone to know that I was happy with the reaction from Derby Wars' customers  
23 and their interaction with Derby Wars' free and pay-to-play contests. In my many  
24 conversations with Mr. Calderone, we often discussed the results of Derby Wars'  
25 pay-to-play contests, including the fact that races from Plaintiffs' tracks were being  
26 used in those contests. Based on my many discussions with Mr. Calderone at and  
27 around this time in which I discussed Derby Wars' pay-to-play contests directly  
28 with Mr. Calderone, I have no doubt that Mr. Calderone understood and was aware



1 that Derby Wars was using races from Plaintiffs' tracks in Derby Wars' pay-to-play  
2 contests.

3 34. I continued discussing Derby Wars and meeting with the Stronach  
4 Group executives throughout the remainder of 2011 and in 2012. In particular, I  
5 had several more discussions with Mr. Calderone about ways to integrate, cross-  
6 promote and partner the Stronach Group properties, including Plaintiffs' race  
7 tracks, with Derby Wars.

8 35. In late October of 2012, Mr. Calderone and I corresponded via e-mail  
9 about meeting in person at the Breeders' Cup the following month. I understood  
10 from Mr. Calderone's e-mails that I would be introduced to Mike Rogers, who Mr.  
11 Calderone told me was the President of the Stronach Group, and Alon Ossip, who I  
12 understood to be the Chief Executive Officer of the Stronach Group. Attached  
13 hereto as **Exhibit B** is a true and correct copy of the e-mail thread between Mr.  
14 Calderone and me in late October of 2012.

15 36. In early November 2012, I met with Mr. Calderone at the Breeders'  
16 Cup to further discuss partnership opportunities. While there, Mr. Calderone  
17 introduced me to Mr. Rogers. When I met Mr. Rogers, we discussed Derby Wars  
18 and the ways it could benefit the Stronach Group, and vice versa. Because I wanted  
19 Mr. Rogers to see how Derby Wars' contests operate, I showed Mr. Rogers the  
20 Derby Wars website on my iPad. While he watched, I clicked through the website  
21 pages and explained to and showed him the pay-to-play contests. I recall showing  
22 Mr. Rogers contests that had races from Plaintiffs' tracks in them, including  
23 specifically Santa Anita, where the meeting took place. I did not hear him object to  
24 Derby Wars' use of Plaintiffs' tracks in its contests. I told him that Derby Wars  
25 was interested in entering into business relationship with the Stronach Group and  
26 Plaintiffs' tracks that would be mutually beneficial to and grow both of our  
27 businesses.

1           37. A few days later, on November 12, 2012, I again e-mailed Mr.  
2 Calderone and asked him what he thought about the idea of putting a Derby Wars  
3 free contest on the Gulfstream Park website. I also proposed a revenue and  
4 information sharing component of this marketing initiative. Attached hereto as  
5 **Exhibit C** is a true and correct copy of the e-mail I sent Mr. Calderone on  
6 November 12, 2012.

7           38. The following year, I continued to reach out to the Stronach Group  
8 executives and representatives of Plaintiffs' tracks. In addition to regularly  
9 communicating with Mr. Calderone, in June of 2013, I communicated directly with  
10 Michael Nyman, the marketing director at Gulfstream Park, about running a  
11 handicapping contest for Gulfstream on the Derby Wars website.

12           39. I continued having discussions with representatives of Plaintiffs'  
13 tracks in 2014 as well. Beginning in October of 2014, I had many discussions with  
14 Nate Newby, the then Vice President of Marketing at Santa Anita Park (one of  
15 Plaintiff's tracks) about Derby Wars and Santa Anita doing a joint sponsorship deal  
16 that would promote Derby Wars to Santa Anita customers. Through those  
17 discussions, I explained to Mr. Newby that Derby Wars had both free and pay-to-  
18 play contests that included races run at Plaintiffs' tracks, including at Santa Anita.  
19 From the tone of Mr. Newby's voice in those discussions, as well as the fact that we  
20 had several more discussions about the topic, he seemed intrigued by Derby Wars'  
21 contests and potential partnership opportunities.

22           40. On December 16, 2014, I again e-mailed Mr. Newby about the  
23 potential for a sponsorship agreement between Santa Anita and Derby Wars. Mr.  
24 Newby informed me that Santa Anita was "absolutely open to a partnership."  
25 Attached hereto as **Exhibit D** is a true and correct copy of my e-mail exchange with  
26 Mr. Newby dated December 16, 2014.

27           41. Over the next few weeks, Mr. Newby and I discussed the specific deal  
28 terms for a potential sponsorship agreement between Santa Anita and Derby Wars.

1 During those discussions, we contemplated that, in exchange for a \$20,000 payment  
2 from Horse Racing Nation (Derby Wars' affiliate website), Santa Anita would  
3 promote Derby Wars to its customers through a series of e-mail blasts. In addition,  
4 we also discussed Derby Wars sponsoring Santa Anita's "Showvivor" contest.

5 42. Ultimately, Horse Racing Nation entered into a sponsorship agreement  
6 with Santa Anita for the 2015 race year. Attached hereto as **Exhibit E** is a true and  
7 correct copy of the sponsorship agreement between Santa Anita and Horse Racing  
8 Nation for the term January 1, 2015 through December 25, 2015.

9 43. As part of the agreement, Santa Anita sent e-mails promoting Derby  
10 Wars to literally thousands of its customers. As a member of the Santa Anita e-  
11 mail list, I received copies of those e-mails. Attached hereto as **Exhibit F** are true  
12 and correct copies of a sampling of e-mail blasts I received between January 14,  
13 2015 and September 25, 2015 from Santa Anita advertising Derby Wars. Attached  
14 hereto as **Exhibit G** are true and correct copies of the e-mail reports I received from  
15 Santa Anita detailing the delivery and click rate statistics of the June 25, 2015 e-  
16 mail blasts. As Exhibit G demonstrates, the June 25, 2015 e-mail blasts were sent  
17 to more than 10,000 unique e-mail addresses.

18 44. On May 7, 2015, I e-mailed Mr. Newby because I had heard that the  
19 Stronach Group may have been interested in contest sites. I wanted Mr. Newby to  
20 communicate that Derby Wars could be a viable acquisition option. Attached  
21 hereto as **Exhibit H** is a true and correct copy of the e-mail I sent Mr. Newby on  
22 May 7, 2015.

23 45. I received an additional e-mails blast from Santa Anita as late  
24 November 25, 2015. Attached hereto as **Exhibit I** is a true and correct copy of an  
25 e-mail blast I received on November 25, 2015 from Santa Anita advertising Derby  
26 Wars.

27 46. While the Santa Anita agreement was active, I also spoke to  
28 representatives of other of Plaintiffs' tracks. In particular, I spoke to Sal Sinatra,

1 the President of the Maryland Jock Club, which operates Laurel Park and Pimlico  
2 Race Track (Plaintiffs' tracks) in November of 2015 about Derby Wars offering  
3 handicapping contests.

4 47. I also continued communicating with the Stronach Group executives  
5 about the success of Derby Wars' agreements with Plaintiffs' tracks. On November  
6 27, 2015, I e-mailed Mr. Rogers about the possibility of entering into a larger scale  
7 partnership with the Stronach Group. Mr. Rogers continued to correspond over the  
8 next few days to set up a time for me to meet in person with Scott Daruty at the  
9 Global Racing Symposium on Racing and Gaming at the University of Arizona in  
10 early December. At the time, I was enthusiastic and optimistic that Derby Wars  
11 and the Stronach Group would be able to partner together. Attached hereto as  
12 **Exhibit J** is a true and correct copy of my e-mail exchange with Mr. Rogers from  
13 November of 2015, as well as subsequent e-mails within the same thread from  
14 December of 2015.

15 48. During the entirety of Derby Wars' operation dating back to October  
16 2011, my multiple discussions with the Stronach Group executives, and Derby  
17 Wars' sponsorship agreement with Santa Anita, Plaintiffs' representatives or the  
18 Stronach Group executives never contacted me to object to Derby Wars using, or to  
19 advise Derby Wars to stop using, race results of races run at Plaintiffs' tracks in  
20 Derby Wars' contests.

21 49. Thus, it came as a total shock to me when I learned, on December 2,  
22 2015, that Plaintiffs had filed this lawsuit against Derby Wars.

23 50. Based on my experience in the industry, I know that the two primary  
24 states that issue ADW service provider licenses ("ADW licenses") are North  
25 Dakota and Oregon, and that ADW refers to form of pari-mutuel horse racing  
26 wagering in which an individual deposits money into an account, and uses the  
27 account balance to pay for pari-mutuel wagers on horse races via the Internet. I  
28

1 also know that, based on my experience in the industry, that the pari-mutuel wagers  
2 placed through an ADW go into the wagering pool on that particular race.

3 51. Because I have worked extensively on both ADW platforms and  
4 contest sites in my career, I know that there are several key differences between  
5 them. Among other differences, in contests, players pay a fixed entry fee in  
6 exchange for the opportunity to play in the contest. In ADW pari-mutuel wagering,  
7 the amount of money that a person can wager is not set in advance, and can vary.  
8 In contests, prizes are predetermined and do not change depending on the number  
9 of participants or the results of the contest. In ADW pari-mutuel wagering, the  
10 payout is determined by the size of the wagering pool (which grows during the lead  
11 up to the race, depending on the number and amount of pari-mutuel wagers placed)  
12 and the wagering odds (which can change up to the time the race closes), which  
13 depend on the total amount of money that customers bet on each horse or wager. In  
14 contests, the winning payouts can never change, but in pari-mutuel wagering, the  
15 odds typically change every minute. In contests, a contest operator can take a  
16 business loss on a contest if, among other things, a contest does not fill to capacity.  
17 In ADW pari-mutuel wagering, tracks are entitled to guaranteed “take-outs” on  
18 each race.

19 52. After Plaintiffs filed this action, I had several conversations with  
20 members and directors of horse racing commissions throughout the United States,  
21 including with Gunner laCour, the Director of the North Dakota Racing  
22 Commission (“NDRC”); and Rick Baedeker, the Executive Director of the  
23 California Horse Racing Board (“CHRB”). I communicated with Messrs. laCour  
24 and Baedeker to discuss whether Derby Wars’ contest would fall under the  
25 regulatory purview of their respective commissions and boards.

26 53. Through my communications with Mr. laCour and my own review of  
27 the NDRC website, I learned that the NDRC does not treat contests as pari-mutuel  
28 wagering, and that the ADW licenses do not grant entities the right to run contests.

1 Specifically, Mr. laCour told me that there were several differences between  
2 contests and pari-mutuel wagering, that licenses issued by the NDRC cover pari-  
3 mutuel wagering only, and the NDRC does not require licensed ADWs to report  
4 contest revenue. In my discussions with Mr. Baedeker, he told me that the CHRB  
5 does not grant licenses to operate contests. Mr. Baedeker also told me that although  
6 contests are not currently under the purview of the CHRB, he was interested in  
7 regulating contests, but no such rules have yet been adopted. Mr. Baedeker also  
8 told me that the CHRB does not receive reporting information regarding contests  
9 because contests are not pari-mutuel wagering.

10 54. I understand that Plaintiffs have agreements with Bet America and  
11 Horse Tourneys, and that neither Bet America nor Horse Tourneys is required to  
12 pay Plaintiffs any fees under those agreements. Based on publicly available  
13 information on the NDRC website and in my discussions with Mr. laCour, I learned  
14 that Horse Tourneys only sought and obtained its ADW license in April of 2016 –  
15 roughly five months *after* Plaintiffs sued Derby Wars. I am informed and believe  
16 that Horse Tourneys has never used its ADW license to operate as an ADW  
17 platform. Attached hereto as **Exhibit K** is a true and correct copy of a printout of  
18 the NDRC meeting minutes from April 21, 2016, in which the NDRC granted  
19 Horse Tourneys its ADW license. I retrieved Exhibit K from the publicly available  
20 NDRC website on March 19, 2017, located at Internet address [https://racing  
21 commission.nd.gov/sites/racingcommission/files/documents/commissioners-  
22 meetings/04\\_21\\_16meeting\\_minutes.pdf](https://racingcommission.nd.gov/sites/racingcommission/files/documents/commissioners-meetings/04_21_16meeting_minutes.pdf).

23 55. Derby Wars has entered into four revenue-sharing and marketing  
24 agreements with race tracks, whereby Derby Wars receives certain content rights,  
25 such as the right to stream live video of races and the right to use tracks' trademarks  
26 and service marks, in exchange for tracks promoting Derby Wars and Derby Wars  
27 paying them fees. These agreements are not predicated on the tracks giving Derby  
28 Wars "consent" to run contests using the results of races run at those tracks.

1           56. As part of my role as CEO of Derby Wars, I regularly stay up to date  
2 on the status of daily fantasy sports (“DFS”) legislation throughout the nation.  
3 Based on my own research, as well as status updates I receive from the Fantasy  
4 Sports Trade Association, I know that New York, Massachusetts, Virginia,  
5 Tennessee, Mississippi, Indiana, Missouri, Kansas, and Colorado have all  
6 successfully enacted legislation to regulate DFS. I believe that two states, New  
7 York and Indiana, have enacted legislation to regulate DFS with respect to horse  
8 racing contests specifically. I am also aware that many state legislatures have  
9 declared DFS legal. I am also aware that there are ongoing efforts to enact DFS  
10 legislation in more than fifteen states, including in California.

11           I declare under penalty of perjury under the laws of the United States of  
12 America that the foregoing is true and correct. Executed on March 20, 2017 in  
13 Louisville, Kentucky.



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Mark Midland

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# **EXHIBIT A**

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**From:** mshutty@comcast.net  
**Sent:** Friday, October 7, 2011 9:15 AM EDT  
**To:** Mark Midland  
**Subject:** Re: Stronach Racing Group & Horse Racing Nation

Hi Mark,

I love how this is evolving with every conversation. It definitely deserves some focused attention. Not sure if BC is the best venue knowing how we'll be running hard while there. We might want to find a time before the BC.

As for Pegram, I'm thinking showcasing the opportunities below added to what we are already doing (developing) presents an even more compelling case for his consideration. Not sure of his connection, relationship or lack thereof with Magna/HRTV, so that will be something we need to know more about. No question, his presence and potential financial backing can only help. Does his presence help in negotiations with Stronach? I guess that depends on what we are negotiating.

Mike

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**From:** "Mark Midland" <markmidland@gmail.com>  
**To:** mshutty@comcast.net  
**Sent:** Friday, October 7, 2011 12:00:50 AM  
**Subject:** Fwd: Stronach Racing Group & Horse Racing Nation

Defintely want to think about this strategically at BC...

Also, this might be the kind of thing we could use Pegram for. If he was on our side... would make a Stronach negotiation a little easier, right?

----- Forwarded message -----

**From:** **Mark Midland** <[markmidland@gmail.com](mailto:markmidland@gmail.com)>  
**Date:** Fri, Oct 7, 2011 at 12:00 AM  
**Subject:** Fwd: Stronach Racing Group & Horse Racing Nation  
**To:** [mshutty@comcast.net](mailto:mshutty@comcast.net), Travis Stone <[travis@racecalling.com](mailto:travis@racecalling.com)>, John Doyle <[jdoyleaz@gmail.com](mailto:jdoyleaz@gmail.com)>, david gutfreund <[daveg1818@yahoo.com](mailto:daveg1818@yahoo.com)>, Brian Zipse <[zipseatthetrack@live.com](mailto:zipseatthetrack@live.com)>

Guys,

I am way too tired to get into this... let's talk about it on the call Tues... but suffice

it to say this guy is really hungry to integrate HRN into TVG and Magna track websites, to integrate DerbyWars into track websites (think GP and SA.com) and possibly TV... and give us what we want on HRTV... commercials... content?

Showtime? There are some really big thoughts here... I think it's all exciting and it all seems reasonably aligned... we just have to think a lot through strategically and if it makes sense to partner with Stronach and how far we want to get into bed with him. But it does seem aligned and win-win... which is a great place to start business deals. There is even possible integration of DerbyWars with Mike's HorseRaceGame simulated racing... that's what he's talking about...

Mark

----- Forwarded message -----

From: **Mike Calderone** <[mike@lvmike.com](mailto:mike@lvmike.com)>

Date: Thu, Oct 6, 2011 at 7:40 PM

Subject: Stronach Racing Group & Horse Racing Nation

To: Mark Midland <[markmidland@gmail.com](mailto:markmidland@gmail.com)>

Hi, Mark –

Just wanted to hit the bullet points from our call today. If I'm missing anything, please clarify. Let's plan on a call next Friday. I'm traveling mid-week. If Friday doesn't work, just let me know.

- Implement the Derby Wars handicapping program across the Stronach web properties and fan pages. The user will not be able to leave the site. There will be engaging content. We'll have to work out the revenue split.
- Identify several tools – I'm interested in the upcoming stakes race tracker, power rankings and race of the week for our websites and our fan pages. Credit will be given to Horse Racing Nation, but we cannot have the user leave the site.
- HRTV has a ton of content. I'm actually going to be out there next Thursday and will get a good idea of the variety of content we have. We can offer that content for Horse Racing Nation with some type of credit to HRTV. Mark, would you be open to helping us sign up subscribers? We have a monthly subscription, all-access program and we can come up with a revenue model for you.

In exchange we can offer spots on HRTV, even some ads inside our racing programs.

- Phase 2 of our relationship will be taking the Derby Wars product, simplifying the front-end interface, incorporating it to the backend virtual simulator and running horse racing contests all day long through a Facebook application, doing a rev share and a data share. Mark, I'm in love with this idea. This could be very viral. The whole thing could be I-framed right into Facebook. I plan on running this program on our sites as well. I also believe this would do great on Horse Racing Nation. This can also be a product we license out to other entities as part of a joint venture. There's a lot of potential here.

As I said on the phone today, we are in the testing phase now of the web viewer where we will begin simulating upcoming stakes races or the race-of-the-week. As soon as this is done, Mark, it will be available for Horse Racing Nation and we can figure a way to bundle the whole thing

together. Anyway, let me know if next Friday works. I'll have some really good ideas of the content we can offer to Horse Racing Nation after my meeting next week.

Thanks,  
Mike

# **EXHIBIT B**



Mark Midland &lt;markmidland@gmail.com&gt;

---

## Breeders Cup meeting

---

**Mike Calderone** <mike@lvMike.com>  
To: Mark Midland <markmidland@gmail.com>  
Cc: Mike Calderone <mike@lvMike.com>

Wed, Oct 31, 2012 at 12:26 PM

Lets meet Friday or Saturday at the Frontrunner. I want you to sit down with Mike and maybe Alon. I am thinking in between races? I am around all day if you want to have a quick conversation

Let me know asap

Thanks buddy

Mike

---

**From:** Mark Midland [mailto:[markmidland@gmail.com](mailto:markmidland@gmail.com)]  
**Sent:** Tuesday, October 30, 2012 6:26 PM  
**To:** Mike Calderone  
**Subject:** Re: Breeders Cup meeting

Mike,

Sounds great. I'm grabbing lunch on the way in Thursday, so I should be around by 2pm on Thursday. Obviously Thursday's best, or early Friday, but I know you guys are busy so let me know what works best.

Mark

On Tue, Oct 30, 2012 at 6:41 PM, Mike Calderone <[mike@lvMike.com](mailto:mike@lvMike.com)> wrote:

Mark- Will you be at the Breeders Cup. If so, I would like you to meet with a few key guys from our company. Please let me know so we can set up a time.

Thanks

Mike

# **EXHIBIT C**





Mark Midland &lt;markmidland@gmail.com&gt;

---

## DerbyWars iFrame - For Gulfstream

---

**Mark Midland** <markmidland@gmail.com>

Mon, Nov 12, 2012 at 9:28 AM

To: mike calderone &lt;mike@lvmike.com&gt;

Mike,

What do you think about putting the DerbyWars play for free game on GulfstreamPark.com?

I know we got close on this last year. The basic idea is:

- We'll capture names and point them back to Gulfstream Park, more Gulfstream contests, XpressBet and DerbyWars
- We'll do a rev-share if players sign up for XB (revenue to DW) or DW (marketing credit for HRN advertising)

I've got it working on HRN now. I want to tighten up the design, but that should only take a few days.

Mark

# **EXHIBIT D**

---

**From:** Mark Midland  
**Sent:** Tuesday, December 16, 2014 2:18 PM EST  
**To:** Newby, Nate  
**CC:** Arthur, Andrew  
**Subject:** Re: Showvivor sponsorship

OK, sounds great.

Andrew - I'll be around all week if you want to chat or shoot something our way.

Mark

318-415-9167

On Tue, Dec 16, 2014 at 2:12 PM, Newby, Nate <[Nate.Newby@santaanita.com](mailto:Nate.Newby@santaanita.com)> wrote:

Hi Mark,

Sounds good. We are absolutely open to a partnership with ShowVivor. Andrew Arthur from our Marketing teams runs ShowVivor so he is going to reach out to you and see what makes sense for both sides.

I hope all is well with you.

Best,

Nate

**From:** Mark Midland [mailto:[markmidland@gmail.com](mailto:markmidland@gmail.com)]  
**Sent:** Tuesday, December 16, 2014 10:49 AM

**To:** Newby, Nate  
**Subject:** Showvivor sponsorship

Nate -

Great catching up this Fall. We're still working on our broader contest ideas for 2015, but in the meantime I wanted to see if there were any sponsorship opportunities related to Showvivor?

Specifically, we'd be interested in:

- Ads/messaging in emails
- Ads/messaging on site - sign in page, etc.
- Dedicated email blasts

Best,

Mark

---

**NATE NEWBY**

Vice President, Marketing



285 West Huntington Drive  
Arcadia, California 91007

Office: [626.574.6391](tel:626.574.6391)  
[www.SantaAnita.com](http://www.SantaAnita.com)

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# **EXHIBIT E**



## ***Santa Anita Park & Horse Racing Nation***

### **Term of Sponsorship:**

Thursday, January 1, 2015 through Friday, December 25, 2015.

### **Value:**

\$20,000

### **Sponsorship Conditions:**

- “Sponsor” HorseRacingNation will be the official “Sponsor” of Santa Anita’s 2015 ShowVivor Contest and 2015 Autumn ShowVivor Contest.
  - Web banners on all ShowVivor desktop and mobile pages (728x90px & 320x50) – Sponsor is responsible for the creative.
  - Banner (728x90px) and Tagline in all “E-Mail Pick Confirmations” – Sponsor is responsible for the creative.
  - Two (2) E-Mail Blasts to the ShowVivor Database (sent on a mutually agreed upon time) – Sponsor is responsible for the creative.
  - Logo to be included in any ShowVivor Marketing Materials
- One (1) E-Mail blast to Santa Anita’s entire e-mail database. Subject line must contain “Santa Anita Sponsor” (sent on a mutually agreed upon time) – Sponsor is responsible for the creative.
- Inclusion on Santa Anita’s “Handicapping Page” in one of the “Top 3” displays. “Sponsor” is responsible for uploading daily selections and creative associated with this page.
  - Logo on “Handicapping Page” with link to the “Selection Page”
  - Logo and link to “Sponsor’s” Website on “Selection Page”

\_\_\_\_\_  
Date \_\_\_\_\_  
Nate Newby, VP of Marketing, Santa Anita Park

\_\_\_\_\_  
Date \_\_\_\_\_  
Mark Midland, Co-Owner and Managing Partner, HorseRacingNation



# **EXHIBIT F**



To: "markmidland@gmail.com" <markmidland@gmail.com>

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**DerbyWars.com!**



**PICK. PLAY. WIN!**  
RACING TOURNAMENTS EVERY DAY

**PLAY NOW**



Don't miss out and get down to The Great Race Place this

Monday.

GET TICKETS



## SUNSHINE MILLIONS WINE FESTIVAL SATURDAY, JANUARY 24

Celebrate the spirit, tastes and Thoroughbred racing tradition at the Sunshine Millions Wine Festival. Sample a generous wine selection and enjoy a top notch day of racing at Santa Anita!

Use promo code **PRESS** for 50% off VIP and general value packages.

GET TICKETS



## GUEST CHEF SERIES SATURDAY, JANUARY 24

The Guest Chef Series returns on Sunshine Million California Cup Day! Enter the dazzling Chandelier Room and marvel at the delectable flavors and specialty cocktails from some of the best culinary minds in the Los Angeles!

GET TICKETS



## THE BIG GAME PARTY SUNDAY, FEBRUARY 1

The Big Game is finally here, and Sirona's Bar & the Bud Light Lounge have the party covered with over 60 HD TVs. Buffet, \$3 Budweiser and Bud Light, Bud Light Girls, games and more! Don't miss this great day of football and racing.

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285 W. Huntington Dr. , Arcadia, CA, 91066





Mark Midland &lt;markmidland@gmail.com&gt;

**\$5,000 Oaks-Derby Survivor. 5 stakes. \$5 entry. Are You In?**

Santa Anita Park <santaanitapark@santaanita.com>  
Reply-To: Santa Anita Park <santaanitapark@santaanita.com>  
To: Mark <markmidland@gmail.com>

Wed, May 2, 2012 at 7:44 PM

Derby Wars: \$5,000 Oaks-Derby Survivor 5 Races. \$5 Entry. Can you survive?

Is this email not displaying correctly?  
[View it in your browser.](#)**Play Now!**[follow on Twitter](#) | [friend on Facebook](#) | [forward to a friend](#)



Copyright © 2012 Santa Anita Park, All rights reserved.

You participated in our Showvivor Contest.

**Our mailing address is:**

Santa Anita Park  
285 W. Huntington Dr.  
Arcadia, Ca 91007

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Mark Midland &lt;markmidland@gmail.com&gt;

**ShowVivor Sponsor: Free Derby Wars Contest**

Santa Anita Park &lt;saacomment@santaanita.com&gt;

Fri, Jun 26, 2015 at 2:58 PM

Reply-To: saacomment@santaanita.com

To: "markmidland@gmail.com" &lt;markmidland@gmail.com&gt;

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**Get into daily horse racing contests at [DerbyWars!](#)****Play this exclusive Santa Anita contest just for Showvivor players!****\$500 FREE Gold Cup Day Contest****Santa Anita Races 6-10 This Saturday -  
3:30PT/6:30ET****Limited to the First 200 Entries!****How to Get In the Game:**



- 1) Click on this [\\$500 Santa Anita Contest link](#) to get to the game.
- 2) Click "Register" at the top if you don't have a DerbyWars account - **it's FREE!**
- 3) Click back on this [\\$500 Santa Anita Contest link](#) to enter the game (keep this email!)
- 4) Click on the green "+" Flag to enter - it will cost 100 points to enter.
- 5) Contact [support@derbywars.com](mailto:support@derbywars.com) if you have any questions.

**PLAY NOW!**

**See Who's In SATURDAY'S STAKES RACES!**

**Need Help? Email [support@derbywars.com](mailto:support@derbywars.com)**

[View As A Web Page](#)

DerbyWars - 714 West Main Street - Louisville, KY - 40202

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Mark Midland <markmidland@gmail.com>

**Sponsor: Get 5 Free Entries for \$1,000 Daily Santa Anita Survivor at DerbyWars**

**Santa Anita Park** <saacomment@santaanita.com>

Fri, Sep 25, 2015 at 9:23 PM

Reply-To: [saacomment@santaanita.com](mailto:saacomment@santaanita.com)

To: Mark Midland <markmidland@gmail.com>

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## \$1,000 Santa Anita Daily Survivor



- Get into daily Survivor contests at [DerbyWars.com](https://DerbyWars.com)!
- All the fun of meet-long Survivor and it only lasts One Day!
  - Turn \$4 into \$1,000!
  - Play up to SIX Entries!
  - Deposit \$25 and **GET 5 FREE ENTRIES!**\*

# PLAY NOW!

• 5 Free Entry Offer to new members only.

**Need Help? Email [support@derbywars.com](mailto:support@derbywars.com)**

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# **EXHIBIT G**



## Email Reports

View email statistics

**Email Name:** Derby Wars #1

**Subject:** ShowVivor Sponsor: Free Derby Wars Contest



5175 Emails sent

Opens	1480	28.6 %
Bounces	112	2.2 %
Unopened	3583	69.2 %
Click Rate	32.4%	

Total Emails Sent	▶ 5175
Opened Emails	▶ 1480 (28.6%)
Links Clicked	▶ 480 (32.4%)
Emails Forwarded	▶ 0
Emails Bounced	▶ 112 (2.2%)
Unsubscribes	▶ 4 (0.1%)
Unopened	▶ 3583 (69.2%)
Abuse Complaints	▶ 0

## Click Performance

URL	Total Clicks
<a href="http://www.derbywars.com/tournaments/147650">http://www.derbywars.com/tournaments/147650</a>	465
<a href="http://www.santaanita.com/live-racing/6272015/">http://www.santaanita.com/live-racing/6272015/</a>	31
<a href="http://blog.derbywars.com/contact-us/">http://blog.derbywars.com/contact-us/</a>	7
<a href="https://www.derbywars.com/">https://www.derbywars.com/</a>	5
<a href="redir.aspx?C=rvaXPFssDEi-u04k5mh62kUOURb6gtJlrXhOWV3W-VdBA3X4yNA5yGyfvQW-">redir.aspx?C=rvaXPFssDEi-u04k5mh62kUOURb6gtJlrXhOWV3W-VdBA3X4yNA5yGyfvQW-</a>	5

## Social Stats

Where does this data come from

Your Social Stats pie will show once we have data available

Facebook Share

Facebook Like

Twitter

LinkedIn

0

0

0

0

Start Sharing [Share](#)

6/30/2015 3:22:00 PM

Powered by  
*Benchmark*  
EMAIL



## Email Reports

View email statistics

**Email Name:** Derby Wars #2 Copy

**Subject:** ShowVivor Sponsor: Free Derby Wars Contest



6210 Emails sent

Opens	1238	19.9 %
Bounces	321	5.2 %
Unopened	4651	74.9 %
Click Rate	27.9%	

Total Emails Sent	▶ 6210
Opened Emails	▶ 1238 (19.9%)
Links Clicked	▶ 345 (27.9%)
Emails Forwarded	▶ 0
Emails Bounced	▶ 321 (5.2%)
Unsubscribes	▶ 4 (0.1%)
Unopened	▶ 4651 (74.9%)
Abuse Complaints	▶ 0

## Click Performance

URL	Total Clicks
<a href="http://www.derbywars.com/tournaments/147656">http://www.derbywars.com/tournaments/147656</a>	334
<a href="http://www.santaanita.com/live-racing/6272015/">http://www.santaanita.com/live-racing/6272015/</a>	15
<a href="https://www.derbywars.com/">https://www.derbywars.com/</a>	9
<a href="redir.aspx?C=rvaXPfssDEi-u04k5mh62kUOURb6gtJlrXhOWV3W-VdBA3X4yNA5yGyfiVQW-_">redir.aspx?C=rvaXPfssDEi-u04k5mh62kUOURb6gtJlrXhOWV3W-VdBA3X4yNA5yGyfiVQW-_</a>	5
<a href="http://blog.derbywars.com/contact-us/">http://blog.derbywars.com/contact-us/</a>	3

## Social Stats

Where does this data come from

Your Social Stats pie will show once we have data available

Facebook Share

Facebook Like

Twitter

LinkedIn

0

0

0

0

Start Sharing [Share](#)

6/30/2015 3:24:00 PM

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*Benchmark*  
EMAIL



# **EXHIBIT H**



Mark Midland &lt;markmidland@gmail.com&gt;

---

**Touching base**

3 messages

---

**Mark Midland** <markmidland@gmail.com>  
To: "Newby, Nate" <Nate.Newby@santaanita.com>

Thu, May 7, 2015 at 12:30 PM

Nate -

I hope you guys had a good Derby weekend. Still been chasing our tails here... with all this technology, it's just one thing or another!

Hey I wanted to see if you have an email for Tom Ludt? I've heard rumblings that Stronach may look into a contest site and I just wanted to make sure they were aware of DerbyWars as an option...

Best,

Mark

---

**Newby, Nate** <Nate.Newby@santaanita.com>  
To: Mark Midland <markmidland@gmail.com>

Thu, May 7, 2015 at 1:53 PM

Hi Mark,

I'm not sure this will still fall under Tom's responsibilities. I suggest reaching out to Mike Rogers ([Mike.Rogers@stronachgroup.com](mailto:Mike.Rogers@stronachgroup.com))

I haven't heard anything yet about a contest site but I will see if I can find out.

Derby Day was fun here at Santa Anita. Very popular results for the Cali bettors.

Nate

---

**From:** Mark Midland [mailto:[markmidland@gmail.com](mailto:markmidland@gmail.com)]  
**Sent:** Thursday, May 07, 2015 9:30 AM  
**To:** Newby, Nate  
**Subject:** Touching base

[Quoted text hidden]

---

**NATE NEWBY**

Vice President, Marketing



285 West Huntington Drive  
Arcadia, California 91007

Office: 626.574.6391  
[www.SantaAnita.com](http://www.SantaAnita.com)

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---

**Mark Midland** <markmidland@gmail.com>  
To: "Newby, Nate" <Nate.Newby@santaanita.com>

Fri, May 8, 2015 at 1:57 PM

Nate,

Thanks. That makes sense and I've met Mike a few times.

Best,

Mark

[Quoted text hidden]

# **EXHIBIT I**



Mark Midland &lt;markmidland@gmail.com&gt;

**Sponsor: Play DerbyWars \$1,000 Survivor This Weekend - Get \$25 FREE!**

Santa Anita Park &lt;saacomment@santaanita.com&gt;

Wed, Nov 25, 2015 at 2:17 PM

Reply-To: saacomment@santaanita.com

To: Mark Midland &lt;markmidland@gmail.com&gt;

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**\$1,000**  
**SURVIVOR** **\$4**  
**GAMES**  
**Every Day!**  
**Del Mar & Aqueduct**

**FRI QUALIFY** for **\$25K**  
**\$50K**

**SAT \$25K** **W/ CIGAR MILE**  
**HOLLYWOOD DERBY**

**SUN \$50K HIGH STAKES**

**NEW PLAYERS - DEPOSIT \$25  
GET \$25 FREE**

**PROMO CODE: TURKEY25**

**PLAY NOW!**

• \$25 Deposit Offer for new members only.

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# **EXHIBIT J**



Mark Midland &lt;markmidland@gmail.com&gt;

---

## Meeting in Tucson

---

**Daruty, Scott** <Scott.Daruty@stronachgroup.com>

Tue, Dec 8, 2015 at 1:06 AM

To: Mark Midland &lt;mmidland@derbywars.com&gt;

Cc: "Rogers, Mike" &lt;Mike.Rogers@stronachgroup.com&gt;, "mshutty@comcast.net" &lt;mshutty@comcast.net&gt;, "Jeziorski, Jack" &lt;JACK.JEZIORSKI@monarchmgmt.com&gt;

Mark,

I am in Tucson this week and available to meet. However, due to the pending litigation between our companies, I want to make sure that any meeting between us would be considered a settlement discussion. Nothing said by either side in the settlement discussion would be subject to use in any judicial proceeding.

If you are in agreement with this approach, then please let me know and let's get something scheduled. Wednesday is much better for me than Tuesday.

Scott

**From:** markmidland@gmail.com [mailto:markmidland@gmail.com] **On Behalf Of** Mark Midland**Sent:** Sunday, December 06, 2015 6:55 PM**To:** Daruty, Scott**Cc:** Rogers, Mike; mshutty@comcast.net**Subject:** Re: Partnering DerbyWars contests with Stronach Group

Scott,

Per Mike's suggestion, are you available to meet this week in Tucson? If so, let us know what times work for you.

Mike Shutty and I will be there starting Monday afternoon.

Mark





318-415-9167

On Mon, Nov 30, 2015 at 10:31 AM, Mark Midland <[mmidland@derbywars.com](mailto:mmidland@derbywars.com)> wrote:

Mike,

OK, great. I will reach out to Scott to set up a time in Arizona.

For our part, while we've been working hard on building this growth engine in contests, we've not done a good enough job of sharing with tracks the success story of contests and where we see things going. Ultimately, while we can continue to go it alone, we see much more potential partnering with tracks and major players in the industry. With the Stronach group, we are open to partnering on track sponsorships to minority ownership and even outright acquisition.

The Stronach group is one of the few players investing in this industry in a serious way and creating growth. We see ourselves in the same light. We've renamed our corporation Horse Racing Labs - because we're using marketing and technology to create new opportunities for growth in racing.

Best,

Mark



[mmidland@derbywars.com](mailto:mmidland@derbywars.com)

318-415-9167

On Sat, Nov 28, 2015 at 2:18 PM, Rogers, Mike <[Mike.Rogers@stronachgroup.com](mailto:Mike.Rogers@stronachgroup.com)> wrote:

Hi Mark - it is unlikely that I will be in Tucson this year, but I would recommend that you meet with Scott Daruty who will be there.

Have you met Scott Daruty before?

Mike

----- Original message -----

From: Mark Midland <[mmidland@derbywars.com](mailto:mmidland@derbywars.com)>

Date: 11-27-2015 1:05 PM (GMT-05:00)

To: "Rogers, Mike" <[Mike.Rogers@stronachgroup.com](mailto:Mike.Rogers@stronachgroup.com)>

Subject: Partnering DerbyWars contests with Stronach Group #668

Mike,

I'm not sure if you recall, but Mike Calderone introduced us at one of the SA BC's a couple years ago.

We've been working to grow our DerbyWars contests the past few years, and we're having some great success bringing in new fans, reinvigorating old ones, and also promoting smaller tracks.

This year we had a small partnership with Santa Anita (\$20K). I wanted to see if we could expand on that with Santa Anita and Gulfstream in 2016. At the same time, through contests, I know we could bring more players to play MD, GG and PM, so I was wondering if it would make more sense to have a larger conversation about partnering with the Stronach Group. I've had a couple conversations with Sal Sinatra in MD and Nate Newby at SA, and both see great value in contests.

There's been a lot written about Daily Fantasy Sports the past couple months, and now it's starting in racing. <http://www.thoroughbreddailynews.com/the-murky-reality-of-fantasy-racing/>

I think contests are a huge opportunity to grow racing. I'd love to follow up with you or someone from the Stronach team. I'm available next week and will be in Tucson the following week to discuss.

Best,

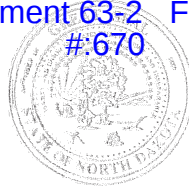
Mark

Mark Midland  
CEO  
Derby Wars & Horse Racing Nation

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[mmidland@derbywars.com](mailto:mmidland@derbywars.com)<<mailto:mmidland@derbywars.com>>  
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# **EXHIBIT K**



## **NORTH DAKOTA RACING COMMISSION**

www.ndracingcommission.com

**Gunner laCour**

Director

### **NORTH DAKOTA RACING COMMISSION**

#### **NDRC Meeting**

**State Capitol Building, Fort Union Room**

**600 East Boulevard Avenue, Bismarck, ND**

**Thursday, April 21, 2016 – 10:30 a.m. (Central Time)**

#### **Minutes**

**Call to Order:** Chairman Jim Ozburn called the meeting to order at 10:30 a.m.

**Present:** Chairman Jim Ozburn, Commissioner Mary Ann Durick, Commissioner Ray Trottier, Commissioner David Piepkorn, Commissioner John Hanson, Legal Counsel Edward Erickson, Director Gunner laCour, and Administrative Assistant Gail Allensworth

**Others Present:** Darrel Smith, McKay Smith, Wayne Slater, Mike Schmitz, John Bubel, Avery Erfle, Leigh Backhaus, Leon Glasser, Sally Dasinger, and Ron Klein

#### **AGENDA**

1. **Approval of Minutes – February 25, 2016 Meeting**
2. **New Service Provider & Account Deposit Wagering – License Application** - Bet Twice Consulting, LLC
3. **Breeders Fund**
4. **Promotion Fund Grant to Breed Associations**
5. **Drug Testing**
6. **Cobalt Variance**
7. **Any other business which may properly come before the Commission**
8. **Adjournment**

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1. **Approval of Minutes – February 25, 2016 Meeting**

Previously, all Commissioners had received a copy of the minutes to review.

**A motion was made** by Commissioner Piepkorn and seconded by Commissioner Durick to accept the minutes of February 25, 2016 as presented. All Commissioners voted aye and hearing no negative vote the motion passed.

Director laCour introduced Mike Schmitz of the ND Horse Park who provided an update on the progress of the OTB's. The Bismarck and Jamestown OTB sites are to be up and running by Derby time. They are looking for a new site for the Fargo OTB location.

2. **New Service Provider & Account Deposit Wagering – License Application** - Bet Twice Consulting, LLC

Director laCour introduced McKay Smith of Bet Twice Consulting, LLC. Mr. Smith gave a brief history of Bet Twice Consulting. Director laCour and the Commissioners asked questions which Mr. Smith answered.

**A motion was made** by Commissioner Hanson and seconded by Commissioner Durick to approve licensing Bet Twice Consulting, LLC, as a Service Provider & Account Deposit Wagering under the conditions that the rules and regulations be updated. Hanson –Y, Durick –Y, Ozbun –Y, Trottier –Y, and Piepkorn –Y. Motion passed.

3. **Breeders Fund**

Director laCour asked the Commissioners to approve the additional adjusted payout of the Breeders Fund for race 5 on July 26, 2015. When Sally Dasinger made the previous adjustments they were not calculated for Triple Breed Fund Points. The additional amount needed is \$1,512.62.

**A motion was made** by Chairman Ozbun and seconded by Commissioner Piepkorn to approve the additional adjusted payout of the Breeders Fund for race 5 on July 15, 2015 in the amount of \$1,512.62. Ozbun –Y, Piepkorn –Y, Trottier –Y, Hanson –Y, and Durick –Y. Motion passed.

4. **Promotion Fund Grant to Associations**

Director laCour asked the Commissioners to approve a \$5,000 Grant from the Promotion Fund to the ND Quarter Horse Racing Association and a \$5,000 Promotion Fund Grant to the ND Thoroughbred Association.

**A motion was made** by Commissioner Durick and seconded by Commissioner Trottier to a \$5,000 Grant from the Promotion Fund to the ND Quarter Horse Racing Association and a \$5,000 Promotion Fund Grant to the ND Thoroughbred Association. Durick –Y, Trottier –Y, Ozbun –Y, Hanson –Y, and Piepkorn –Y. Motion passed.

5. **Cobalt Variance**

Director laCour asked for a variance to the medication rules to provide for Cobalt testing and the applicable thresholds found in the ARCI model rules on a random basis for the upcoming races. This is the same as what was done in 2015.

**A motion was made** by Commissioner Trottier and seconded by Commissioner Piepkorn to approve a variance to the medication rules to provide for Cobalt testing and the applicable thresholds found in the ARCI model rules on a random basis for the upcoming races. Trottier –Y, Piepkorn –Y, Ozbun –Y, Hanson –Y, and Durick –Y. Motion passed.

Director laCour informed every one of the cut-off date for the out-of-state racing is October 31. This is because of the statute (NDCC 53-06.2-11(6)) which states that Breed Fund checks for the current year need to be paid during the current year and Sally needs time to process the awards. Director laCour may go to the Legislature next year to address the change for out-of-state racing to add two additional months to pay out.

No motions needed.

Director laCour made a recommendation to go back to what is in the original statute for registration fees of foals. The fee is \$10 if paid by December 31 of the foaling year and \$1,000 after December 31 of the foaling year. This would be effective January 1, 2017. There was discussion between the Commissioners and the horsemen regarding this change.

A motion was made by Commissioner Piepkorn and seconded by Commissioner Durick to reinstate to what is in the original statute regarding the registration fees of foals. The fee is \$10 if paid by December 31 of the foaling year and \$1,000 after December 31 of the foaling year. This is effective January 1, 2017. Piepkorn –Y, Durick –Y, Ozbun –Y, Hanson –Y, and Trottier –Y. Motion passed.

**6. Drug Testing**

Director laCour provided an update regarding human drug testing at the tracks. Our rule states that it is based upon reasonable cause. There was discussion among the Commissioners and the horsemen.

No motions needed.

Director laCour reminded everyone present about the outbreak of EHV and the seriousness of the disease. He indicated that there would be increased security with additional cost involved in addressing this issue.

No motions need at this point.

Director laCour stated the Chippewa Downs has a shortage of material needed for the racetrack. The cost is \$31,000 which is for materials only. He recommended splitting the cost equally between the track and the Commission. The cost would be \$15,500 from the Promotion Fund

A motion was made by Chairman Ozbun and seconded by Commissioner Durick to award \$15,500 from the Promotion Fund to Chippewa Downs to split the cost equally for the materials needed for the racetrack for the upcoming meet. Ozbun –Y, Durick –Y, Hanson –Y, Piepkorn –Y, and Trottier –Y. Motion passed.

**7. Any other business which may properly come before the Commission**

Director laCour stated that there would be additional measures taken at the track and that procedures would be put in place because of the EHV outbreak.

No motions needed.

Leigh Backhaus indicated that the weight of the jockeys is sometimes listed incorrectly in the racing program which in turns showing up incorrectly in Equibase. Director laCour will contact the Racing Secretary to make sure that this does not happen.

No motions needed.

**8. Adjournment**

Chairman Ozbun requested the meeting be adjourned.

A motion was made by Commissioner Piepkorn and seconded by Commissioner Hanson. All Commissioners voted aye and hearing no negative vote the motion passed.

The meeting was adjourned at 12:08 p.m.